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No. 103

In the Supreme Court of the United States

OCTOBER TERM, 1942

CARTER H. HARRISON, INDIVIDUALLY AND AS COLLECTOR OF INTERNAL REVENUE, FIRST COLLECTION DISTRICT OF ILLINOIS, PETITIONER

v.

THE NORTHERN TRUST COMPANY AND MARY E. KAUFMAN, EXECUTORS UNDER THE LAST WILL AND TESTAMENT OF HENRY M. WOLF, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE PETITIONER

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OPINION BELOW

The District Court rendered no opinion. The opinion of the Circuit Court of Appeals (R. 217–220) is reported in 125 F. (2d) 893.

JURISDICTION

The judgment of the Circuit Court of Appeals was rendered on February 27, 1942 (R. 220–221). The petition for a writ of certiorari was filed or

May 27, 1942, and was granted on October 12, 1942. The jurisdiction of this Court rests upon Section 240 (a) of the Judicial Code, as amended by the Act of February 13, 1925.

QUESTION PRESENTED

Whether, under the provisions of Section 303 (a) (3) of the Revenue Act of 1926 as amended by Section 807 of the Revenue Act of 1932, the amount to be deducted from decedent's gross estate on account of decedent's bequest of his residuary estate to charity is the actual amount of such bequest, after payment of federal estate taxes, or what would have been the amount if there had been no federal estate taxes.

STATUTES AND REGULATIONS INVOLVED

Section 807 of the Revenue Act of 1932, c. 209, 47 Stat. 169, provides as follows:

> Sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1926 are amended by inserting after the first sentence of each a new sentence to read as follows:
>
> "If the tax imposed by section 301, or any estate, succession, legacy, or inheritance taxes, are, either by the terms of the will, by the law of the jurisdiction under which the estate is administered, or by the law of the jurisdiction imposing the particular tax, payable in whole or in part out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount

deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes."

The other statutory provisions and the regulations involved appear in Appendix A, *infra*, pp. 18–20.

STATEMENT

This is an action brought by the respondents as executors under the will of Henry M. Wolf to recover an alleged overpayment of federal estate tax. The facts, as stipulated (R. 71–81) and as disclosed by the pleadings (R. 2–44), may be summarized as follows:

Testator, a resident of Chicago, Illinois, died on June 4, 1935, leaving a gross estate of $4,238,805.97 (R. 71–73). After subtracting (1) funeral and administration expenses, etc., (2) specific bequests to individuals, and (3) specific bequests to charities (the latter aggregating $1,570,696.74), there remained a residue of $463,103.08, before federal death taxes were taken out (R. 4). The testator bequeathed the residuary estate to four named charitable organizations (R. 72–73). Except for a direction that all inheritance, legacy, succession, and estate taxes on certain of the bequests to individuals should be paid out of the general estate, the will contained no provision as to the payment of federal or state taxes (R. 73).

The respondents contend that in computing the federal estate tax they are entitled to deduct,

inter alia, the entire residue of $463,103.08 as charitable bequests. The Government, on the other hand, contends that since the death taxes reduce the amount of the residue available for distribution to the four named charities, there may be deducted as charitable bequests only that portion of the $463,103.08 which may actually be distributed to the charitable donees. And since the Commissioner determined that total net taxes amounted to $459,879.57, which would be paid out of the residuary estate, there remained only $3,223.51 which would pass under the residuary bequests (R. 74–78). Under the Commissioner's computation, therefore, only $3,223.51 was allowed as a charitable deduction with respect to the residue[1] (R. 87).

Respondents paid the tax assessed by the Commissioner under protest and thereafter filed a claim for refund in the amount of $119,069.43 with interest. This amount is the difference between the tax assessed by the Commissioner plus interest thereon paid by respondents and $342,744.60, which is the tax computed according to respondents' theory that the amount properly deductible on account of the bequest of the residuary estate to charity is the full amount which would

[1] The specific charitable bequests, aggregating $1,570,696.74, were, of course, allowed as deductions in full, and after adding the $3,223.51 deduction with respect to the residuary estate, the Commissioner allowed a total charitable deduction in the amount of $1,573,920.25 (R. 87).

have been receivable under the bequest in the absence of any federal estate tax. The claim for refund was rejected by the Commissioner and this suit followed. (R. 78–91.) The District Court entered judgment for respondents (R. 211–212) and the Circuit Court of Appeals affirmed (R. 220–221).

By stipulation of the parties it is conceded that the suit should be dismissed with costs to respondents if the Commissioner was correct in construing Section 807 of the Revenue Act of 1932 to limit the deduction on account of the bequest of the residuary estate to charity to the amount actually receivable under the bequest after payment of the federal estate tax. It is also conceded that if Section 807 is inapplicable, as respondents contend, respondents are entitled to recover the amount claimed by them ($119,069.43) with interest. (R. 79–80.) Apart from the question of statutory construction, there is, therefore, no question as to the accuracy of the respective computations of tax made by the Commissioner and by respondents.

SPECIFICATION OF ERRORS TO BE URGED

1. The Circuit Court of Appeals erred in holding that the deduction allowable in the instant case by reason of the bequest of the decedent's residuary estate to charities under Section 303 (a) of the Revenue Act of 1926, as amended by

Section 807 of the Revenue Act of 1932, is in the amount which the charities would have received had it not been necessary to pay the death taxes involved.

2. The Circuit Court of Appeals erred in not holding that the deduction allowable in the instant case by reason of the bequest of the decedent's residuary estate to charities under Section 303 (a) (3) of the Revenue Act of 1926, as amended by Section 807 of the Revenue Act of 1932, was only in the amount actually distributable to the charities after payment of the federal estate taxes.

3. The Circuit Court of Appeals erred in affirming the judgment of the District Court.

SUMMARY OF ARGUMENT

Prior to the payment of the federal estate tax there was a residuary estate of $463,103.08. The executors contend that since the decedent made a charitable bequest of the residue, the full $463,103.08 is allowable as a charitable deduction. It is our position, on the other hand, that since the payment of the tax reduces the amount distributable out of the residue to the charitable beneficiaries, the tax itself must be computed in such manner that the amount allowable as a charitable deduction with respect to the residue is the amount actually left for distribution to the charitable beneficiaries.

The situation here presented is identical with that in *Edwards* v. *Slocum*, 264 U. S. 61, where the issue was decided against the Government. However, Congress thereafter changed the statute, and the provisions of Section 807 of the Revenue Act of 1932, here involved, were expressly recognized by the House Ways and Means Committee as a "legislative reversal" of that decision.

Section 807 provides that where the estate tax is, either under the will or under local law, "payable * * * out of the bequests, legacies, or devises otherwise deductible under this paragraph, then the amount deductible under this paragraph shall be the amount of such bequests, legacies, or devises reduced by the amount of such taxes." The court below erroneously refused to give effect to these provisions. It fastened upon the words "payable * * * out of," and ruled that since under Illinois law, the estate tax was a charge against the entire estate, it could not be payable "out of" the residuary charitable bequest. We may concede *arguendo* that the estate tax is a charge against the entire estate under Illinois law, in the sense that collection may be had in the first instance from any assets left by the decedent. But the effect of such collection, under Illinois law, nevertheless reduces the amount payable to the charitable beneficiaries out of the residue. It was in this sense that Congress employed the words "payable * * * out of," and any doubt

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on this issue is unambiguously resolved by the legislative history of these provisions. Congress undertook to reverse the rule of *Edwards* v. *Slocum*, but the court below has refused to give effect to the Congressional purpose.

ARGUMENT

THE AMOUNT TO BE DEDUCTED ON ACCOUNT OF THE CHARITABLE BEQUEST OF THE RESIDUARY ESTATE IS THE NET AMOUNT ACTUALLY DISTRIBUTABLE TO THE CHARITABLE LEGATEES

1. The decedent bequeathed the residue of his estate to certain named charities and the question presented relates to the computation of the charitable deduction on account of that bequest. Prior to the payment of federal estate taxes the residuary estate amounted to $463,103.08 and it is that amount which the respondents seek to deduct in full. However, the payment of the estate taxes with respect to the entire estate absorbed the great bulk of that residue. In consequence only a relatively small amount was actually available for distribution to the charities. It is the Government's position that the deduction may be taken only for the net amount actually distributable to the charities.

The situation is substantially identical with that presented in *Edwards* v. *Slocum*, 264 U. S. 61, which arose under the Revenue Act of 1918. Section 403 (a) (3) of that Act was the first to grant the deduction for gifts to charities. In the

Slocum case, as here, there was a charitable bequest of the residuary estate. The Commissioner regarded the deductible residuary estate as that which was left after all the charges, including the federal estate tax, had been taken out of the estate. It was held, however, that the amount of the deduction attributable to the charitable gift of the residue was to be computed without regard to the fact that the actual amount which the charities would receive would be decreased by the federal estate tax.

Section 807 of the Revenue Act of 1932 was thereafter enacted for the recognized purpose of doing away with the result reached in *Edwards* v. *Slocum*.[2] The report of the House committee accompanying the 1932 revenue bill made it clear that these provisions were intended to constitute "a legislative reversal of the decision in that case." H. Rep. No. 708, 72d Cong., 1st Sess., pp. 49–50, Appendix B, *infra*, pp. 21–22.[3]

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[2] The provisions of Section 807 have since been incorporated in Section 812 (d) of the Internal Revenue Code (53 Stat. 1).

[3] The decision in *Edwards* v. *Slocum* was rendered on February 18, 1924; it was called to the attention of the Senate Committee which was then considering the Revenue Bill of 1924, and when that bill was reported out it contained a sentence substantially identical with the provisions involved herein. See H. R. 6715 (Calendar No. 388), 68th Cong., 1st Sess., p. 149. The report of the Senate Committee (S. Rep. No. 398, 68th Cong., 1st Sess., p. 35) as well as the Conference Report (H. Conference Rep. No. 844, 68th Cong., 1st Sess., pp. 25–26) unambiguously disclosed that the new pro-

The same committee report expressly recognized the vice of *Edwards* v. *Slocum*, saying (see Appendix B, *infra*, p. 22):

> Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

Thus, under the prior law as interpreted by *Edwards* v. *Slocum*, the testator was provided with a facile means of estate tax avoidance. He could carve up his estate in such manner as to leave a residue roughly equal to the anticipated tax and then make the meaningless bequest of the "residue" to charity. The charity, of course, would

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visions were intended to permit as a deduction only the amount actually distributable to the charitable donees. See Appendix B, *infra*, p. 23. Although those provisions were enacted as part of Section 303 (a) of the Revenue Act of 1924, they were subsequently repealed as of June 2, 1924, by Section 323 (a) of the Revenue Act of 1926, c. 27, 44 Stat. 9. They were thereafter restored to the estate tax law by Section 807 of the Revenue Act of 1932, here involved.

receive nothing, but the estate would obtain the windfall of a substantial charitable deduction. Section 807 was enacted to prevent such avoidance in the future.

2. The court below, however, refused to give effect to the known purpose of Section 807. It fastened upon the words "payable * * * out of" in Section 807, and determined that since the federal death tax was a charge against the decedent's entire estate under Illinois law (*People* v. *Pasfield*, 284 Ill. 450; *People* v. *Northern Trust Co.*, 289 Ill. 475; *People* v. *McCormick*, 327 Ill. 547),[4] the tax was not payable "out of" the residuary charitable bequests, with the result that Section 807 is inapplicable here. Accordingly, it ruled, following *Edwards* v. *Slocum*, that the full amount of the gross residue was deductible, rather than the net amount actually distributable to the charitable legatees. We respectfully submit that the court misconstrued Section 807.

It may be conceded, *arguendo*, that the federal

[4] Although the opinions in those cases refer to the federal tax as a charge against the entire estate, the question actually decided in each of them, so far as is relevant here, was quite narrow. The court simply held that in computing the state inheritance taxes, the amount of the federal taxes must be subtracted from the decedent's assets in order to determine the net amount of the various legacies and bequests subject to the state tax. Thus, even under Illinois law, the bequests and legacies are treated as the net amounts receivable after payment of federal taxes. Therefore, far from casting doubt upon our position here, those cases furnish strong support for it.

estate tax is a charge against the entire estate under Illinois law. Indeed, as we pointed out in our brief in *Riggs* v. *Del Drago*, No. 30, present Term, the federal tax is theoretically always carved out of the estate as a whole prior to distribution, and the estate as thus diminished is then divided among the survivors. But the payment of the tax obviously reduces the amounts that would otherwise be distributed to one or more of the various survivors, and it is in this sense that Section 807 must be construed. Congress simply meant that where the burden of the death tax would, as a result of state law, diminish the amount otherwise receivable by a charitable legatee, a deduction would be allowed only for the reduced amount. It was in this sense that Congress used the words, "payable * * * out of." The death tax is payable "out of" a charitable bequest within the meaning of Section 807, if as a result of state law that bequest is reduced by the amount of the tax. And it has not been disputed in this case that the weight of the tax is felt by the residuary bequests, i. e., that the residuary bequests are diminished by the amount of the tax.[5]

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[5] Indeed, the rule in most states is that in the absence of a contrary direction by the testator the weight of the tax falls upon the residuary legatees or devisees. *Turner* v. *Cole*, 118 N. J. Eq. 497; *Ericson* v. *Childs*, 124 Conn. 66; *Estate of Brown* v. *Hoge*, 198 Iowa 373; *Thompson* v. *Union & Merc. Trust Co.*, 164 Ark. 411; *Woodruff* v. *Holmes*, 328 Mo. 143; *Plunkett* v. *Old Colony Trust Co.*, 233 Mass. 471; *Bemis* v. *Converse*, 246 Mass. 131; *Pratt* v. *Dean*, 246 Mass. 300; *Hepburn* v. *Winthrop*, 83 F. (2d) 566 (App. D. C.); *Amos-*

If the view of the court below were to prevail, Section 807 would never have any application. For, the federal estate tax is always carved out of the estate as a whole in the first instance; and in the technical sense in which the court below read the statute it is never paid "out of" any particular bequest. Congress must have intended to refer to bequests which, as a result of state law, feel the burden of the tax. To be sure, Congress has made Section 807 turn upon state law; but the problem is to ascertain where the state law fixes the ultimate burden of the tax, not what label it places upon the result.[8] *Morgan* v. *Commissioner*, 309 U. S. 78, 80–81. And, in the instant situation, it is not disputed that Illinois law fixes the ultimate burden upon the residuary legatees; it is therefore immaterial that the Illinois decisions describe the result in terms of a different formula.

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keag &c. Co. v. *Dartmouth College*, 89 N. H. 471; *Y. M. C. A.* v. *Davis*, 106 Ohio 366, affirmed, 264 U. S. 47. A different rule probably prevails in Florida (*Henderson, et vir.* v. *Usher*, 125 Fla. 709), and perhaps in Kentucky (compare *Lakes* v. *Lakes' Executors*, 267 Ky. 684, with *Martin* v. *Martin's Adm'r.*, 283 Ky. 513, and *Hampton's Admr.* v. *Hampton*, 188 Ky. 199). A different rule has likewise been adopted by statute in Pennsylvania (Act of July 2, 1937, P. L. 2762) and in New York. The constitutionality of the New York statute is before the Court in *Riggs* v. *Del Drago*, No. 30, present Term.

[8] Indeed, the report of the House committee with respect to Section 807 specifically described the situation in *Edwards* v. *Slocum* as follows: "Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity." (See

Our position is further confirmed by Section 826 (b) of the Internal Revenue Code (53 Stat. 1), which is involved in the *Del Drago* case and which provides as follows:

> (b) REIMBURSEMENT OUT OF ESTATE.—If the tax or any part thereof is paid by, or collected out of that part of the estate passing to or in the possession of, any person other than the executor in his capacity as such, such person shall be entitled to reimbursement out of any part of the estate still undistributed or by a just and equitable contribution by the persons whose interest in the estate of the decedent would have been reduced if the tax had been paid before the distribution of the estate or whose interest is subject to equal or prior liability for the payment of taxes, debts, or other charges against the estate, it being the purpose and intent of this subchapter that so far as is practicable and unless otherwise directed by the will of the decedent the tax shall be paid out of the estate before its distribution.

It will be observed that Congress contemplated that the tax would generally be taken out of the estate as a whole, but recognized that the burden would be felt by the various beneficiaries. Accordingly, it may reasonably be assumed that in enacting Section 807 Congress was legislating in

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Appendix B, *infra*, p. 22.) But this is precisely the situation here, even under respondents' interpretation of the Illinois decisions; therefore, since Section 807 was intended as a "legislative reversal" of *Edwards* v. *Slocum*, it is plain that Section 807 is applicable here.

the light of the foregoing provisions, and intended to refer merely to those bequests that would be diminished by the payment of the tax.

3. The court below refused to look into the legislative history of Section 807 on the principal ground that the provisions are so clear as to foreclose the inquiry. (R. 219.) However, we submit that the legislative history, discussed above, is illuminating and should not have been so lightly put aside. See *United States* v. *Amer. Trucking Ass'ns*, 310 U. S. 534, 543–544:

> When aid to construction of the meaning of words, as used in the statute, is available, there certainly can be no "rule of law" which forbids its use, however clear the words may appear on "superficial examination." The interpretation of the meaning of statutes, as applied to justiciable controversies, is exclusively a judicial function. This duty requires one body of public servants, the judges, to construe the meaning of what another body, the legislators, has said. Obviously there is danger that the courts' conclusion as to legislative purpose will be unconsciously influenced by the judges' own views or by factors not considered by the enacting body. A lively appreciation of the danger is the best assurance of escape from its threat but hardly justifies an acceptance of a literal interpretation dogma which withholds from the courts available information for reaching a correct conclusion. Emphasis should be

laid, too, upon the necessity for appraisal of the purposes as a whole of Congress in analyzing the meaning of clauses or sections of general acts. A few words of general connotation appearing in the text of statutes should not be given a wide meaning, contrary to a settled policy, "excepting as a different purpose is plainly shown."

Cf. *United States* v. *Dickerson*, 310 U. S. 554, 562.

4. In the brief below the respondents made two additional contentions which they may renew here, but which may be briefly dismissed.

(a) The respondents have argued that the Government's interpretation of Section 807 results in the imposition of a "tax upon a tax," which was said to be unconstitutional. But whatever may be said of the accuracy of respondents' characterization of Section 807, it is clear that this case simply involves a charitable deduction which Congress could have denied altogether. *Helvering* v. *Ind. Life Ins. Co.*, 292 U. S. 371, 381; *Helvering* v. *Insurance Co.*, 294 U. S. 686, 689; *Helvering* v. *Winmill*, 305 U. S. 79, 84. Cf. *Taft* v. *Commissioner*, 304 U. S. 351, 358–359. Congress is therefore certainly not without constitutional power to limit that deduction.

(b) The respondents have also raised the objection that the tax is computed by resort to an algebraic formula. Although it is true that an

algebraic formula may conveniently be employed,[7] the computations may also be made by the use of ordinary arithmetic methods.[8] Moreover, Section 807 was enacted by Congress in the face of the statement in the *Slocum* opinion with respect to algebraic computations; and, in any event, this Court has recently approved a method of computation which involved the use of a quadratic equation. *United States* v. *New York*, 315 U. S. 510, 518–520.

CONCLUSION

The decision below is erroneous and should be reversed.

Respectfully submitted.

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NOVEMBER 1942.

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[7] The algebraic problem may be stated as follows: Let x = amount of the estate tax. Find x so that the deduction on account of the charitable bequest of the residue in this case would be equal to $463,103.08 minus x.

[8] There is no dispute as to the correctness of the Commissioner's computation, for it was stipulated that the Government was entitled to judgment dismissing the executors' suit if the Commissioner's interpretation of Section 807 is correct (R. 79–80).

APPENDIX A

Revenue Act of 1926, c. 27, 44 Stat. 9:

SEC. 303. For the purpose of the tax the value of the net estate shall be determined—

(a) In the case of a resident, by deducting from the value of the gross estate—

* * * * *

(3) The amount of all bequests, legacies, devises, or transfers, to or for the use of the United States, any State, Territory, any political subdivision thereof, or the District of Columbia, for exclusively public purposes, or to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private stockholder or individual, or to a trustee or trustees, or a fraternal society, order, or association operating under the lodge system, but only if such contributions or gifts are to be used by such trustee or trustees, or by such fraternal society, order, or association, exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals. The amount of the deduction under this paragraph for any transfer shall not exceed the value of the transferred property required to be included in the gross estate; * * *.

Treasury Regulations 80 (1934 Ed.):

ART. 44. *Transfers for public, charitable, religious, etc., uses.*—Deduction may be taken of the value of all property transferred by will or by the decedent in his lifetime not to exceed the value of the transferred property required to be included in the gross estate if in either case the property was transferred * * * (2) to or for the use of any corporation or association organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes (including the encouragement of art and the prevention of cruelty to children or animals), if no part of the net earnings of the corporation or association inures to the benefit of any private stockholder or individual, and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation; * * *.

* * * * *

If the decedent died after 5 p. m., eastern standard time, June 6, 1932, and under the terms of the will, or the law of the jurisdiction wherein the estate is administered, or the law of the jurisdiction imposing the particular tax, the Federal estate tax (including the additional estate tax imposed by the Revenue Act of 1932), or any estate, succession, legacy, or inheritance tax is payable in whole or in part out of any bequest, legacy, or devise deductible under section 303 (a) (3), the sum deductible is the amount of such bequest, legacy, or devise so reduced. Thus, if $50,000 is bequeathed for a charitable purpose and is subjected to a State inheritance tax of $5,000, the amount deduct-

ible is $45,000; or if a life estate is bequeathed to an individual with remainder over to a charitable corporation, and by the local law the legacy tax upon the life estate is taken out of the corpus with the result that the charitable corporation will be entitled to receive only the amount of the fund less the tax, the deduction is limited to the present worth, as of the date of the testator's death, of the remainder of the fund so reduced; or if the testator bequeaths his residuary estate, or a portion thereof, to charity, and his will contains a direction that certain inheritance taxes, otherwise payable from legacies in respect to which they were laid, shall be payable out of such residuary estate, the deduction may not exceed the bequest to charity thus reduced pursuant to the direction of the will; or if a residuary estate, or a portion thereof, be bequeathed to charity, and by the local law the Federal estate tax is payable out of the residuary estate, the deduction may not exceed that portion of the residuary estate bequeathed to charity as reduced by the Federal estate tax. Should the executor desire a verification of his own computation before filing the return on Form 706, or should he wish the Bureau to make the computation for him in the first instance, he should accompany his request with a statement of the material facts.

APPENDIX B

H. Rep. No. 708, 72d Cong., 1st Sess., pp. 49–50 (1939–1 Cum. Bull. (Part 2) 457, 492):

SECTION 807. DEDUCTION OF BEQUESTS, ETC., TO CHARITY.

The purpose of this amendment is to limit the deduction for charitable bequests, etc., to the amount which the decedent has in fact and in law devised or bequeathed to charity. Under existing law no consideration can be given to any estate, succession, legacy, or inheritance taxes imposed with respect to a decedent's estate even though by the terms of his will or the local law they actually reduce the amount of such bequest or devise. It is evident that where the decedent gives his residuary estate to charity, but by his will directs that such taxes shall be paid therefrom, all that he gives to charity and all that charity is entitled to receive is the residuary estate reduced by the amount of the taxes charged against it; the residuary estate being what is left after the subtraction of such taxes and other charges and prior bequests. This is equally true where, in the absence of such a direction in the will, such taxes under the local law are payable out of the residuary estate.

This amendment restores the sentence appearing in sections 303 (a) (3) and 303 (b) (3) of the Revenue Act of 1924, which was retroactively repealed by section 323 of the Revenue Act of 1926.

The Supreme Court on February 18, 1924, in the case of *Edwards* v. *Slocum* (264 U. S., 61), held that, as a matter of construction, a residuary gift to charity was not to be reduced by the Federal estate tax which was imposed on so much of the estate as the testatrix had bequeathed to individuals. Under the State law the estate tax was payable generally out of the estate and so fell upon and reduced the residuary estate given to charity. As a legislative reversal of the decision in that case, the sentence referred to was incorporated in the revenue act of 1924 and covered Federal estate taxes as well as State inheritance taxes where, either by the terms of the will or by the local law, any such tax operated to reduce the amount given to and received by charity. In view of the retroactive repeal of the sentence, the Treasury took the position that the legislative intent thereby indicated necessarily extended both to the Federal estate tax and to State inheritance taxes.

Under the existing law, most absurd results are reached. Thus, if a testator gives his residuary estate to charity and directs that the Federal estate tax and the State inheritance taxes shall be paid out of such estate, the result may be that nothing is left for charity. In such case, notwithstanding nothing is given to charity and charity receives nothing, still there must be deducted from the gross estate a wholly fictitious sum, namely, what he would have given to charity had he not directed otherwise. The result in all other cases to which the amendment will apply varies from the foregoing example in degree only.

S. Rep. No. 398, 68th Cong., 1st Sess., p. 35 (1939–1 Cum. Bull. (Part 2) 266, 290):

> * * * A sentence has been inserted in paragraph (3) [of subdivision (a)] and in paragraph (3) of subdivision (b) to make it clear that the amount deductible under these paragraphs on account of bequests, legacies, or devises for the specified benevolent purposes shall be the net amount distributable for such purposes, after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom. It is evident that if a testator leaves a residuary estate of $1,000,000 to a charity, but the estate taxes payable out of the residue reduce the amount actually distributed to the charity to $950,000, only the latter amount should be deductible, in computing the amount of the net estate, as a bequest to charity. This sentence so provides.

H. Conference Rept. No. 844, 68th Cong., 1st Sess., pp. 25–26 (1939–1 Cum. Bull. (Part 2) 300, 308):

> * * * An additional sentence has been added to these paragraphs to provide that the amount deductible under such paragraphs on account of bequests, legacies, devises, or transfers for the specified benevolent purposes shall be the net amount distributable for such purposes after estate, legacy, or inheritance taxes imposed in respect thereof have been deducted therefrom.

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